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18 September 1954

OGC Has Reviewed

MEMORANDUM FOR: Inspector General

SUBJECT: Independent Contractors and Employees

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REFERENCE: Your memo "Status of [redacted]
dated July 20, 1954

1. The question of when a person utilized by this Agency is entitled to the benefits of statutes generally applicable to Government employees and when he is not is a difficult one as it applies to certain specific cases, but generally, I believe, the rules are clear.

2. Under the system which has been evolved through experience all the covert persons converted are handled through the Office of the Special Contracting Officer in Personnel. Through his check list system and the discussions necessarily involved in determining the method of utilization, we must presume that the document which results represents the true intent of the Agency and the individual at that time. If it results in an employment contract, no problem is presented, as the statutes automatically apply. If the contract clearly indicates the services are performed in the capacity of an independent contractor, that normally will settle the rights and benefits of the individual for the full term of the contract.

3. The difficulty arises when the factual situation shifts through operational or administrative needs so that the individual appears to work in a capacity more like that of an employee, thus qualifying the independent contractor status. I think it is quite true that this can take place, as we have had situations where a person originally retained as an independent contractor ends up working in what is essentially a staff position with other staff personnel under the same supervision and control and under a regular duty schedule. Even if the records and other administrative actions are not taken, such a person would appear to have become an employee by virtue of the change in circumstances.

4. The proper solution of such a change would be to convert the individual to an employee status when the facts so justify. This has been done on numerous occasions. There are many situations, however, where the facts evolve gradually and are not as clear-cut

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as in the situation mentioned above. The general rule, I believe, should be that the currently asserted document should be the controlling factor unless clearly controverted by the facts. In other words, the presumptions are against the shift and the factual inconsistencies must be overwhelming. It does not appear to me that this is the situation in the [redacted] case and I would be of the opinion, therefore, that in the absence of further and more conclusive information, [redacted] status be regarded as that of independent contractor.

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[redacted]
Office of General Counsel

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